

California Regional Water Quality Control Board  
Santa Ana Region

October 26, 2001

**ITEM: 14**

**SUBJECT:** Administrative Civil Liability Complaint No. 01-84, Kaufman and Broad,  
Fontana, San Bernardino County

**BACKGROUND**

On August 16, 2001, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. 01-84 (copy attached) to Kaufman and Broad of Southern California for alleged violations of the State's General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$30,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Kaufman and Broad of Southern California.

ACL No. 01-84 was issued by the Executive Officer to Kaufman and Broad of Southern California (K&B) for failing to develop and implement an effective Storm Water Pollution Prevention Plan, and for discharging unauthorized non-storm water to the storm drain system.

**DISCUSSION**

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$250), with the State Water Resources Control Board. K&B filed an NOI and obtained coverage under the General Permit, WDID NO. 836S310561. K&B's 95-acre construction site is located in the City of Fontana, between the I-15 Freeway and Baseline Road.

On June 14, 2001, Board staff inspected the construction site and noted that no best management practices (BMPs) were implemented, debris and dirt were in the street, storm drain inlets (one at the cul-de-sac of Gettysburg Street, and two on Wilderness Way) were covered by dirt and trash, and an unauthorized non-storm water discharge from a water hose was carrying sediments into inadequately protected storm drains. This discharge was estimated to be approximately 100 gallons during the time period of the inspection. There was no site superintendent or other responsible person on site. Board staff contacted the telephone number provided on the Notice of Intent, but was unsuccessful in reaching anyone at that number.

On June 20, 2001, Board staff re-inspected the site and observed the same problems. Non-storm water from a sediment-laden puddle near the cul-de-sac was flowing into an inadequately protected storm drain near the intersection of Gettysburg Street and Wilderness Way. Sandbags deployed were deteriorated and had become sources of sediments. Board staff pointed out these problems to one of the site's personnel for immediate correction, and requested that the message be relayed to the site superintendent. Board staff contacted the number provided in the Notice of Intent several times and left several messages requesting a return call, but was again unsuccessful in reaching anyone responsible for the site.

On July 12, 2001, Board staff conducted a drive-through inspection of the site. Problems similar to those observed previously existed throughout the site. Storm drain inlets were not adequately protected and sediment-laden water from the construction area at the corner of Gettysburg Street and Wilderness Way was

observed flowing into the storm drain. Debris and sediment were accumulating and covering the storm drain inlets. Board staff again left several messages at the contact number, but no one from K&B returned staff's telephone calls.

Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

K & B violated Provisions A.2 and C.2. of the General Permit. K & B violated Provision C.2 by failing to properly develop and implement an effective SWPPP and violated Provision A.2 by discharging non-storm water, containing pollutants, to waters of the United States from the construction site. Pursuant to the Water Code Section 13385 (a) (2), civil liability may be imposed for the preceding violations. The maximum potential liability for these violations is \$30,000.

The Executive Office issued ACL No. 01-84 because of these violations of the General Permit. The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent, and Gravity of the Violations

By submitting the NOI, the discharger certified that they would comply with the provisions of the permit including the development and implementation of a SWPPP and a Monitoring Program. They were also aware of the prohibition on discharge of unauthorized non-storm and storm water containing pollutants from the subject site.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Board staff had informed K & B's on-site staff during the June 20, 2001, inspection that sediment-laden non-storm water discharges must cease and adequate BMPs must be implemented. K & B failed to correct the violations which resulted in continuing sediment discharges into the storm drains 22 days after that inspection.

3. Degree of Culpability

The storm water regulations are applicable to all construction activities. All dischargers, including K & B, are responsible for compliance with the Clean Water Act. K & B is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively develop and implement BMPs, K & B gained an economic advantage over their competitors. Economic saving from these violations are estimated as follows:

Cost to eliminate pollutants in non-storm water runoff, by using  
appropriate BMPs for the construction area  
(approximately 35% of 95 acres at \$800/acre) = \$26,600

In addition, Regional Board staff costs to investigate this incident were \$1,050.

### **STATEWIDE ENFORCEMENT POLICY**

On April 18, 1996, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

### **RECOMMENDATION**

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$30,000, specified in the Administrative Civil Liability Complaint issued by the Executive Officer on August 16, 2001.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Complaint No. 01-84</b>
	)	<b>for</b>
<b>Kaufman &amp; Broad of Southern California</b>	)	<b>Administrative Civil Liability</b>
<b>801 Corporate Center Dr., Suite 201</b>	)	
<b>Pomona, CA 91768-2641</b>	)	
	)	
<b><u>Attn: Mr. Kevin Manning</u></b>	)	

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Kaufman & Broad of Southern California (K & B) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on September 14, 2001, at the Orange County Water District, 10500 Ellis Avenue, in the City of Fountain Valley. K & B or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. K & B's construction site, located near the I-15 Freeway, at the corner of East Avenue and Gettysburg Street in Fontana, is regulated under the State's General Permit for Storm Water Runoff Associated with Construction Activities, Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit), WDID No. 836S310561.
5. K & B is alleged to have violated Provisions A.2 and C.2 of the General Permit. K & B failed to properly develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring and Reporting Requirements, and discharged pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385 (a)(2), civil liability may be imposed for the preceding violations.
6. This complaint is based on the following facts:

- a) On June 14, 2001, Board staff inspected the K & B construction site and noted that no best management practices (BMPs) were implemented, debris and dirt were in the street, storm drain inlets (one at the cul-de-sac of Gettysburg Street, and two on Wilderness Way) were covered by dirt and trash, and unauthorized non-storm water discharge from a water hose was carrying sediments into inadequately protected storm drains. Approximately 100 gallons were discharged from the water hose at the time of inspection. There was no site superintendent or responsible person on site. Board staff contacted the telephone number provided on the Notice of Intent, but was unsuccessful in reaching anyone at that number.
  - b) On June 20, 2001, Board staff re-inspected the site and observed the same problems. Non-storm water from a sediment-laden puddle near the cul-de-sac continued to flow slowly into an inadequately protected storm drain near the intersection of Gettysburg Street and Wilderness Way. Sandbags deployed were deteriorated and had become sources of sediments. Board staff pointed out these problems to one of the site's personnel for immediate correction, and requested that the message be relayed to the site superintendent. Board staff contacted the number provided in the Notice of Intent several times and left several messages requesting a return call, but was again unsuccessful in reaching anyone responsible for the site.
  - c) On July 12, 2001, Board staff conducted a drive-through inspection of the site. Problems similar to those observed previously existed throughout the site. Storm drain inlets were not adequately protected. Sediment-laden water from the construction area at the corner of Gettysburg Street and Wilderness Way was observed flowing into the storm drain. Debris and sediment were accumulating and covering up the storm drain inlets. Board staff again left several messages at the contact phone number, but no one from K&B returned staff's telephone calls.
7. K & B is alleged to have violated Provisions A.2 and C.2. of the General Permit. K & B violated Provision C.2 by failing to properly implement an effective SWPPP and violated Provision A.2 by discharging non-storm water, containing pollutants, to waters of the United States from the construction site.
  8. Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
  9. Pursuant to Section 13385(c), K & B is civilly liable in the amount of \$30,000 (\$10,000 per day for three days of violation) for the violations cited in Paragraph 7, above. The total maximum assessment is \$30,000.

10. Regional Board staff spent a total of 15 hours investigating this incident (@\$70.00 per hour), for a total staff time cost of \$1,050. K & B saved approximately \$30,400 (\$800 per acre for 40% of 95 acres still unstabilized and under construction) by not implementing appropriate BMPs, including not sweeping the streets and not providing appropriate storm drain inlet protection. These factors were considered in assessing the penalty indicated in Paragraph 11, below.
11. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes civil liability be imposed on K & B by the Board in the amount of \$30,000 for the violations cited above.

### **WAIVER OF HEARING**

K & B may waive its right to a hearing. If K & B chooses to do so, please sign the attached waiver and return it, together with a check or money order, payable to the State Water Resources Control Board, for the amount of civil liability proposed in Paragraph 11, above, to:

Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

If you have any questions, please contact Ms. Milasol Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238. All legal questions should be referred to the Regional Board's staff counsel, Mr. Jorge León, at (916) 341-5180.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gerard J. Thibeault  
Executive Officer

In the matter of:	)	Complaint No. 01-84
	)	for
Kaufman & Broad of Southern California	)	Administrative Civil Liability
801 Corporate Center Dr., Suite 201	)	
Pomona, CA 91768-2641	)	

## WAIVER OF HEARING

I agree to waive Kaufman and Broad of Southern California's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 01-84. Enclosed is a check, made payable to the State Water Resources Control Board, in the amount of \$30,000. I understand that I am giving Kaufman and Broad of Southern California's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for Kaufman and Broad of Southern California